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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 TAJU AHMED,
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14 ROBERT W. FOX,
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Petitioner,
vs.
Respondent.

Civil No. 15-1492 BAS (JLB)

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION
PURSUANT TO 28 U.S.C.
§ 2244(b)(3)(A) GATEKEEPER
PROVISION**

Petitioner, Taju Ahmed,, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis. The Court does not rule on Petitioner's request to proceed in forma pauperis because this case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

PETITION BARRED BY GATEKEEPER PROVISION

The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has submitted to this Court challenging his February 11, 1997 conviction in San Diego Superior Court case No. SCD120898. On January 13, 2000, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in case No. 00cv0084 W (AJB). In that petition, Petitioner challenged his conviction in San Diego Superior Court case No. SCD120898 as well. On September 22, 2000, this Court dismissed the petition because Petitioner's

1 claims were procedurally defaulted. (*See* Order filed 9/22/00 in Case No. 00cv0084 W
2 (AJB) [ECF no. 17].) Petitioner appealed that determination, and on November 25, 2003
3 the Ninth Circuit vacated this Court's decision and remanded the case back to this Court
4 for consideration in light of the Ninth Circuit's decision in *Bennett v. Mueller*, 322 F.3d
5 573 (9th Cir. 2003). (*See* Order dated 11/25/03 in Case No. 00cv0084 W (AJB) [ECF
6 no. 34].)

7 Following the remand, this Court again dismissed the petition as procedurally
8 defaulted on October 14, 2004. (*See* Order filed 10/14/04 in Case No. 00cv0084 W
9 (AJB) [ECF no. 55].) On May 12, 2006, the Ninth Circuit upheld this Court's dismissal.
10 (*See* Order filed 5/12/06 in Case No. 00cv84 W (AJB) [ECF no. 66].)

11 Petitioner filed another petition for writ of habeas corpus pursuant to 28 U.S.C.
12 § 2254 in this Court on July 25, 2008 in case no. 08cv1352 BTM (NLS). The Court
13 dismissed that case as successive pursuant to the gatekeeper provision of 28 U.S.C.
14 § 2244(b)(3)(A) on August 8, 2008. (*See* Order dated 8/8/08 in case no. 08cv1352 BTM
15 (NLS) [ECF No. 2].) The Ninth Circuit subsequently denied Petitioner's application for
16 authorization to file a successive petition on November 6, 2008. (*See* Order dated
17 11/6/08 in case no. 08cv1352 BTM (NLS) [ECF No. 3].)

18 **INSTANT PETITION BARRED BY GATEKEEPER PROVISION**


19 Petitioner is now seeking to challenge the same conviction he challenged in his
20 prior federal habeas petitions. "[A] denial on grounds of procedural default constitutes
21 a disposition on the merits and thus renders a subsequent § 2254 petition or § 2255
22 motion 'second or successive' for purposes of the AEDPA." *Henderson v. Lampert*, 396
23 F.3d 1049, 1053 (9th Cir. 2005), citing *Carter v. United States*, 150 F.3d 202, 205 (2d
24 Cir. 1998) (per curiam). Unless a petitioner shows he or she has obtained an Order from
25 the appropriate court of appeals authorizing the district court to consider a successive
26 petition, the petition may not be filed in the district court. *See* 28 U.S.C.
27 § 2244(b)(3)(A). Here, there is no indication the Ninth Circuit Court of Appeals has
28 granted Petitioner leave to file a successive petition.

CONCLUSION

Because there is no indication Petitioner has obtained permission from the Ninth Circuit Court of Appeals to file a successive petition, this Court cannot consider his Petition. Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. *The Clerk of Court is directed to mail Petitioner a blank Application for Leave to File a Second or Successive Petition or Motion Under 28 U.S.C. § 2254.*

IT IS SO ORDERED.

DATED: July 8, 2015


Hon. Cynthia Bashant
United States District Judge